

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 1:07-CR-0240
	:	
v.	:	(Judge Conner)
	:	
BENJAMIN SIMMONS	:	

ORDER

AND NOW, this 7th day of September, 2007, upon consideration of defendant's motion (Doc. 27) to require notice of intention to use "other crimes, wrongs, or acts" evidence under Rule 404(b) of the Federal Rules of Evidence or "specific instances of conduct" evidence under Rule 608(b),¹ and it appearing that the government does not intend to introduce any character evidence within the scope of Rule 404 (see Doc. 36 at 2),² and that Rule 608(b) evidence, i.e., impeachment evidence, may not be used in the government's case-in-chief against defendant, see FED. R. CRIM. P. 12(b)(4) (providing that a defendant may "request notice of the government's intent to use (in its *evidence-in-chief* at trial) any evidence that the defendant may be entitled to discover under Rule 16" (emphasis added)), see also, e.g., United States v. Bryant, 420 F. Supp. 2d 873, 876 (N.D. Ill.

¹ Rule 404(b) specifically requires that the government "provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any [Rule 404(b)] evidence it intends to introduce at trial." FED. R. EVID. 404(b). Rule 608(b) does not contain such a requirement.

² The government did not address defendant's request for notice of the government's intention to use "specific instances of conduct" evidence under Rule 608(b).

2006) (“Rule 608(b) evidence may not be used by the government in its case-in-chief and therefore such evidence is not discoverable under Rule 12 of the Federal Rules of Criminal Procedure.”), it is hereby ORDERED that the motion (Doc. 27) is DENIED.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge